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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,996	12/04/2000	Steven E. Schultz	1247 P 160	6877

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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/729,996

Applicant(s)

SCHULTZ, STEVEN E.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/2/02 + 2/14/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 11-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

Applicant's election with traverse of Groups I and III in Paper No. 10 is acknowledged. The traversal is on the ground(s) that claim 29 requires "selecting an actuator based on the desired distance the nose is to extend through the outward opening", because the groups relate to the same class, and because the search is not unduly burdensome. This is not found persuasive because selecting an actuator based on the desired distance the nose is to extend through the outward opening is not the same as selecting an actuator based on its aesthetic appearance such as selecting the actuator based on its color. Additionally, the mere fact that the groups I and II can be classified in the same class does not, on its face, preclude a restriction requirement. All that is required is art recognized separate status which is clearly demonstrated by the classification into the two different subclasses in class 049. Finally, the applicants argument that the search is not unduly burdensome is not persuasive because the search for the invention of group I does not require at least the search in class 49/506 in addition to searches in other classes which cover a system of assembling a tilt latch. Therefore, the search would be unduly burdensome.

Next, the applicant traverses the restriction requirement because the examiner has provided no basis for the requirement of an election of species and the criteria for grouping the species has not been provided. This is not found persuasive because the allegations listed above show that the applicant has not analyzed the examiner's action in the context of the established practice for requiring an election of species as established in Chapter 800 of the MPEP. It is a well established practice that a

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requirement to elect a single species is a holding by the examiner that the plural species, as claimed, are patentably distinct, i.e., each capable of supporting separate patents. See MPEP 808.01(a) and MPEP 809.02(a). If the applicant is of a different view, the applicant need merely state on the record that the species are not patentably distinct. Neither the examiner nor the applicant need present any reasoning that the plural species, as claimed, are patentably distinct. Of course, the species that are not patentably distinct are obvious in view of one another. The applicant's response implies that the various species are not considered to be patentably distinct from one another. If such is the case, then the applicant must clearly admit such on the record. The requirement is still deemed proper and is made FINAL.

Accordingly, claims 11-31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected species, the requirement having been traversed in paper no. 10.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

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disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the legal phraseology "means" on line 9 should be avoided. On line 13, "adjusted or varied" is confusing because it is unclear how adjusted is different from varied. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claim 1-10 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "connected together at their extremities" on lines 2-3 of claim 32 render the claims indefinite because it is unclear if the only the two stiles are connected together at their extremities or if the top rail, base and two stiles are connected together at their extremities. Recitations such as "or" on line 11 of claim 32 render the claims indefinite because it is unclear which one of the two alternatives the applicant is positively setting forth.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Simpson '353. Simpson '353 discloses a tilt latch 40 for a sash window comprising a housing 42 having an outward end opening (not numbered, but seen in figure 4), a latch bolt 44 disposed within the housing, the latch bolt having a nose 81, an actuator 48, a post 106 located on one of the latch bolt and the actuator and a notch 95 located on the other of the latch bolt and actuator, the post or notch being positioned such that when the latch bolt is fully extended through the outward end opening, a portion of the nose is positioned within the housing.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ahlgren, Hetman, Schultz '615 and '070, Shultz et al. and Liang are cited for disclosing a tilt latch for a window sash.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
May 19, 2003